

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Misuse of Internet Protocol (IP) Captioned
Telephone Service

Telecommunications Relay Services and Speech-
to-Speech Services for Individuals with Hearing
and Speech Disabilities

CG Docket No. 13-24

CG Docket No. 03-123

COMMENTS OF THE NEBRASKA PUBLIC SERVICE COMMISSION

The Nebraska Public Service Commission (NPSC) respectfully submits these comments in response to the Notice of Proposed Rulemaking (NPRM) released by the Federal Communications Commission (FCC) on August 26, 2013, and published in the Federal Record on September 3, 2013.¹ In the NPRM, the FCC seeks comment on many issues regarding the possible migration of intrastate Internet Protocol Captioned Telephone Services (IP CTS) to state telecommunications relay service (TRS) programs. The NPSC appreciates the opportunity to offer comments on the issues raised by the FCC. While the NPRM seeks comments on many specific questions, the NPSC has broad overarching concerns about the course proposed in the NPRM. In these comments we will address what we see as the broader issues surrounding the NPRM.

¹ *In the Matter of Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket No. 13-24 and *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Further Notice of Proposed Rulemaking (rel. Aug. 26, 2013).

More Information and Data Imperative

The NPSC stresses first and foremost that until state specific data and information is provided allowing the states to estimate with a reasonable amount of certainty the cost to the state TRS programs to administer intrastate IP CTS, it is impossible to take a position for or against migrating intrastate IP TRS to the states. It is impractical to consider moving forward with migrating intrastate IP CTS costs and administration to the states without hard data. The FCC must do a proper study and instruct its Interstate TRS Fund Administrator to collect and release state specific data to enable such studies to be done. Only with hard data will each state be able to determine the state specific IP CTS usage and costs currently and make projections for the growth of IP CTS in the future. Frankly, Nebraska needs tools and data to enable us to do an analysis of the impacts on the state before we can possibly articulate a position or advocate a course of action.

Jurisdictional Issues

Secondly, the NPSC urges the FCC to refer this proposal to the Separations Joint Board to resolve the inherent jurisdictional issues of transitioning an internet based service to state administration. Migrating the funding and administration of the intrastate portion of IP CTS to states would constitute a significant departure from established FCC policy. The policy and legal consequences of such a move are far-reaching and of critical importance to the FCC stated policy making distinctions between “information services” and “telecommunications services”. To proceed as contemplated in the NPRM, the FCC must be prepared to repeal its decision that internet based services are exclusively under Federal jurisdiction, and instead find internet based services are subject to mixed jurisdiction. Only with such a finding would it be appropriate to transition any portion of the cost recovery of providing IP CTS to the states. If the FCC is

unwilling to make such a finding, then IP CTS services should remain as it is currently, exclusively interstate, with all costs recovered from the Federal TRS Fund.

Further, the NPRM does not indicate how the FCC proposes to determine the appropriate allocation between intrastate and interstate IP services for the purposes of splitting costs between the Federal TRS Fund and state TRS funds. Only when the jurisdictional and policy issues are settled can the appropriate allocation between intrastate and interstate IP CTS be determined. Therefore, a study of separations is imperative prior to any decision regarding migration of the intrastate portion of IP CTS to the states.

State Law Change Required

Next, if the FCC proceeds with migrating intrastate IP CTS to the states, such a transition would necessitate a change in Nebraska law. Nebraska's TRS statutes are framed in terms of "conventional telephone systems" and would not in their current state allow Nebraska to collect, administer, or contract to provide IP CTS under the current Nebraska TRS program.² Also, Nebraska's TRS surcharge is capped at \$.20 per number per month. Depending on the results of studies to determine the cost to the state, as discussed in the previous section, it may also require a statutory change to the funding cap.

Additionally, an unfunded mandate from the FCC that states must collect more money from their citizens to fund what the FCC had previously determined to be a federal service, could be a difficult sell to state legislators. With state budgetary and economic issues, many legislators may not look favorably on such a mandate and the required changes to state statute.

² See *Neb. Rev. Stat.* § 86-302 & § 86-311 (2012 Cum. Supp.).

A Significant Transition Period Required

Finally, Nebraska's Legislature is part-time and meets only a few months out of each year. Therefore, assuming all the other issues are resolved and we do seek statutory changes to the TRS Act in Nebraska, accomplishing statutory changes would require significant time, a minimum of five years. Further, Nebraska contracts with one provider to provision TRS service in Nebraska. With IP CTS, Nebraska would be required to contract for the services of an IP CTS provider using a Request for Proposal (RFP) process to select one IP CTS provider for Nebraska. The RFP process would add a minimum of eight months to a year onto the process.

Conclusion

The NPSC appreciates the opportunity to provide comment on the proposed migration of intrastate IP CTS services to the states. However, we feel the current proposal regarding such migration as contained in the NPRM is premature and impractical at this time. There is insufficient data included in the NPRM to enable the NPSC to take an informed position. Hard data on IP CTS users and minutes must be gathered and analyzed with studies conducted to enable the states to determine current and estimated costs of such an undertaking. An analysis of jurisdictional separations must be conducted, and the factors and criteria to allocate IP CTS services between intrastate and interstate determined. Finally, the over-arching jurisdictional and policy implications of what is proposed in the NPRM, that reach far beyond IP CTS, must be

addressed and answered before any serious discussion of migration of an internet based service to states can begin.

Respectfully submitted,

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